

E-Filed 4/5/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MARIA AIRES V. TABULA,
Plaintiff,
v.
WASHINGTON MUTUAL BANK, et al.,
Defendants.

Case Number 5:10-cv-05819 JF/HRL

**ORDER¹ ADOPTING REPORT AND
RECOMMENDATION TO DISMISS
WITH LEAVE TO AMEND**

[RE: Doc. No. 5]

Plaintiff Maria Aires V. Tabula originally filed the instant action in the Santa Clara Superior Court against Defendants Washington Mutual Bank, California Reconveyance Corporation, Quality Loan Services Corporation, Equity Capital Real Estate, and individual Maureen Connor. Defendants timely removed the case to this Court, where it was assigned to Magistrate Judge Howard R. Lloyd. Defendants then moved to dismiss Plaintiff's complaint. On February 28, 2011, Judge Lloyd filed a Report and Recommendation concluding that Defendants' motion to dismiss Plaintiff's complaint should be granted, with leave to amend.

After Judge Lloyd issued his Report and Recommendation, Plaintiff filed late opposition to Defendants' motion to dismiss. In addition, Defendants Equity Capital Real Estate and Maureen Conner object to Judge Lloyd's Report and Recommendation, urging the Court to dismiss the complaint without leave to amend.

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. Pro. 72(b), and Civil Local Rule 72-3,

¹ This disposition is not designated for publication and may not be cited.

1 this Court concurs with and adopts in its entirety Judge Lloyd's Report and Recommendation. In
2 addition to being untimely, Plaintiff's brief in opposition to the motion to dismiss exceeds the
3 page limit by eight pages, *see* Civil L.R. 7-4(b), appears to address claims not asserted in the
4 complaint, and fails to respond to the majority of the arguments raised by Defendants.
5 Accordingly, Defendants' motion to dismiss will be granted. However, this circuit has a liberal
6 standard for granting plaintiffs leave to amend an inadequate complaint, particularly with respect
7 to plaintiffs representing themselves. *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th
8 Cir. 1995) (holding that a *pro se* litigant must be given leave to amend unless it is absolutely
9 clear that the deficiencies of the complaint cannot be cured by amendment). Accordingly,
10 Plaintiff will be granted leave to amend. Any amended pleading must address the deficiencies
11 noted in Defendants' moving papers and must be filed within thirty (30) days of the date of this
12 order.

13 IT IS SO ORDERED.

14 DATED: April 5,2011



JEREMY FOGEL
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of the Office of the Clerk, United States District Court, Northern District of California.

On April 4, 2011, I served a true and correct copy of the attached document to each of the persons hereinafter listed by placing said copy in a postage paid envelope and depositing said envelope in the United States mail, or by placing said envelope in the outgoing mail delivery receptacle located in the Clerk's Office:

Maria Aires V. Tabula
1515 Fledermaus Court
San Jose, CA 95121

DATED: April 5, 2011

For the Court
Richard W. Weiking, Clerk